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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 DANIEL BISSON, et al.,

11 Plaintiffs,

12 v.

13 BANK OF AMERICA, N.A., et al.,

14 Defendants.

CASE NO. C12-0995JLR

ORDER DENYING
DEFENDANTS' MOTION TO
DISMISS AS MOOT

15 Before the court is Defendants Bank of America, N.A., Countrywide Bank, F.S.B.,
16 BAC Loans Servicing, LP, Countrywide Home Loans, Inc., ReconTrust Company, N.A.,
17 and Mortgage Electronic Registration Systems, Inc.'s Federal Rules of Civil Procedure
18 12(b)(1) and 12(b)(6) motion to dismiss. (Mot. (Dkt. # 15).) For the reasons explained
19 below, the court DENIES Defendants' motion as moot.

20 Defendants' motion is based on Plaintiffs' original complaint for damages and
21 declaratory relief filed on June 10, 2012. (*See generally* Mot. (citing Compl. (Dkt. # 1).)
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1 After Defendants moved to dismiss the original complaint on August 28, 2012, Plaintiffs
2 filed an amended complaint on October 2, 2012. (*See* Am. Compl. (Dkt. # 26).)

3 “[T]he general rule is that an amended complaint supercedes the original
4 complaint and renders it without legal effect” *Lacey v. Maricopa Cnty.*, 693 F.3d
5 896, 927 (9th Cir. 2012); *see also Valadez-Lopez v. Chertoff*, 656 F.3d 851, 857 (9th Cir.
6 2011) (“[I]t is well-established that an amended complaint supersedes the original, the
7 latter being treated thereafter as non-existent.”) (quotation marks omitted). Courts often
8 apply this rule to motions to dismiss a complaint that has since been superseded and deny
9 such motions as moot. *See, e.g., Wagner v. Choice Home Lending*, 266 F.R.D. 354, 360
10 (D. Ariz. 2009) (“As both motions pertain to Plaintiff’s original complaint and Plaintiff
11 has since filed an Amended Complaint, both Motions are now moot.”); *Garibaldi v.*
12 *JPMorgan Chase Bank, N.A.*, No. 109-CV-00574-AWI-GSA, 2009 WL 1531565, at *1
13 (E.D. Cal. May 28, 2009) (“The amended complaint has superseded the original
14 complaint in its entirety, and the court is now proceeding with the amended complaint.
15 Thus, Defendants’ motion addressing the original complaint is now moot.”) (internal
16 citations omitted); *Ezonics Corp. v. Primax Electronics, Ltd.*, No. C04-5370 MMC, 2005
17 WL 851015, at *1 (N.D. Cal. Apr. 13, 2005); *see also* 6 ARTHUR R. MILLER & MARY
18 KAY KANE, *FEDERAL PRACTICE AND PROCEDURE* § 1476 (3d ed. 2012) (“[I]f the first
19 complaint is considered superseded by the amendment, the court is not required to
20 dismiss the suit when a motion points up [sic] the weaknesses of the earlier pleading.”).

21 If, however, the amended complaint suffers from the same deficiencies as the
22 original complaint, it is within the court’s discretion to consider a motion based on the

1 original complaint as if it were based on the amended complaint. *See, e.g., Jordan v. City*
2 *of Philadelphia*, 66 F. Supp. 2d 638, 641 n.1 (E.D. Pa. 1999) (“Since Counts IV through
3 XII of the amended complaint suffer from the same deficiencies that are addressed in
4 defendants’ motion to dismiss, the court will allow the motion to dismiss these counts to
5 be considered as addressing the amended complaint.”); *Sun Co., Inc. (R & M) v. Badger*
6 *Design & Constructors, Inc.*, 939 F. Supp. 365, 367 (E.D. Pa. 1996) (“[T]he contentions
7 presented in Defendants’ initial Motion to Dismiss are germane to the Amended
8 Complaint because it failed to cure a majority of the deficiencies initially alleged.”); *see*
9 *also* WILLIAM W. SCHWARZER ET. AL., FEDERAL CIVIL PROCEDURE BEFORE TRIAL
10 ¶¶ 9:262-63.1 (The Rutter Group 2012) (“[T]he court will usually treat the motion to
11 dismiss as mooted. It may, however, proceed with the motion if the amendment does not
12 cure the defect.”).

13 Here, the court declines to consider Defendants’ motion to dismiss as addressing
14 the amended complaint instead of the original complaint. Although the two complaints
15 are similar in many ways, the amended complaint alleges facts, claims, and legal theories
16 that do not appear in the original complaint. (*See, e.g.,* Am. Compl. at ¶¶ 96-115; 147-
17 54.) Further, the Amended Complaint appears to respond directly to many of the
18 concerns raised by Defendants’ motion to dismiss.

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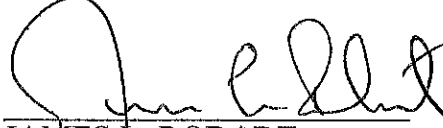
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1 For the foregoing reasons, the court DENIES Defendants' motion as moot.

2 (Dkt. # 15.)

3 Dated this 16th day of November, 2012.

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5 JAMES L. ROBART
6 United States District Judge
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